

INITIAL STATEMENT OF REASONS

SB 528 QUALITY GLASS INCENTIVE PAYMENT PROPOSED PERMANENT REGULATIONS

TITLE 14. NATURAL RESOURCES DIVISION 2. DEPARTMENT OF CONSERVATION CHAPTER 5. DIVISION OF RECYCLING

The Department of Conservation (Department) proposes to amend sections of Title 14 of the California Code of Regulations (CCR). Proposed permanent amendments to the CCR are necessary to clarify requirements for program participants who are eligible for, and may receive quality glass incentive payments authorized by recent legislation. The Department proposes to amend Sections 2090, 2105, 2420, 2425, 2530, and renumber Section 2850.

Subchapter 2. General Requirements Article 4. General Accounting Requirements

SECTION 2090

Amended Subsection 2090(f)(3)(B)(14): This amendment is necessary to reflect the changes made in statute by SB 528. Prior to the enactment of this bill, only curbside programs could receive quality glass incentive payments for color-sorted glass beverage containers. SB 528 extended the eligibility for quality glass incentive payments to any certified entity that color-sorts glass beverage containers collected by curbside programs. This amendment clarifies that, for processors and recyclers that use consolidated shipping reports, eligible color-sorted glass must be identified on this report to claim a quality glass incentive payment. The amendment simplifies the reporting process, and deletes the requirement that mixed color materials also be identified on the consolidated shipping report. The new requirement provides that the designating sorting facility will also identify color-sorted glass - "S" will designate that the glass had been color-sorted by the Shipper, and "R" will designate that the glass had been color-sorted by the receiver. This will be consistent with proposed amendments to Subsection 2425(e)(3) and 2530(f)(11).

SECTION 2105

Amended Subsection 2105(b): This regulatory package will make a minor amendment to the reporting process for processors and recyclers who choose to claim quality glass incentive payments from the Division on the Shipping Report (DR-6). The Shipping Report (DR-6) will be modified to reflect this change in revision dates. The reference to the revised date of the Shipping Report (Form DR-6) is necessary to identify the most current revised date of that form. The revision date of March 2002 (03/02) indicated in the emergency regulations was incorrectly entered, and should have been January 2002 (01/02). This nonsubstantive correction is made in this permanent package.

Amended Subsection 2105(c): See comments for Subsection 2105(b).

Subchapter 2. Processors
Article 3. Accounting and Reporting Requirements

SECTION 2420

Amended Section 2420(e): This amendment is necessary to reflect the changes made in statute by SB 528. Prior to the enactment of this bill, only curbside programs could receive quality glass incentive payments for color-sorted glass beverage containers. SB 528 extended the eligibility for quality glass incentive payments to any certified entity that color-sorts glass beverage containers collected by curbside programs. This Section is restructured to clarify the information that must be identified in records that are prepared and retained by processors in processor-to-processor transactions. This restructured Section provides a “laundry list” for processors to easily check the adequacy of information they include in their records.

Renumbered Subsection 2420(e)(1): This restructured Subsection is renumbered for clarity only and contains the current regulatory provision that requires the shipping and receiving processor to be identified in all processor-to-processor transactions.

Renumbered Subsection 2420(e)(2): This restructured Subsection is renumbered for clarity only and contains the current regulatory provision that requires the date of shipment, material type, and weight of material be identified in all processor-to-processor transactions.

New Subsection 2420(e)(3): This Subsection is necessary to reflect the changes made in statute by SB 528. Prior to the enactment of this bill, only curbside programs could receive quality glass incentive payments for color-sorted glass beverage containers. SB 528 extended the eligibility for quality glass incentive payments to any certified entity that color-sorts glass beverage containers collected by curbside programs. In processor-to-processor transactions, current regulations do not provide a mechanism for the purchasing processor to determine the origin of materials purchased. This new Subsection will require that in processor-to-processor transactions, the selling processor indicate the amount of material that was collected by curbside programs.

SECTION 2425

Amended Subsection 2425(e)(3): This amendment is necessary to reflect the changes made in statute by SB 528. Prior to the enactment of this bill, only curbside programs could receive quality glass incentive payments for color-sorted glass beverage containers. SB 528 extended the eligibility for quality glass incentive payments to any certified entity that color-sorts glass beverage containers collected by curbside programs. The amendment simplifies the reporting process for processors on the Shipping Report (DR-6), and deletes the requirement that mixed-color materials also be

identified in this report. The new requirement provides that the designating sorting facility will also identify color-sorted glass - “S” will designate that the glass had been color-sorted by the Shipper, and “R” will designate that the glass had been color-sorted by the Receiver. This amendment will be consistent with proposed amendments to Subsection 2090(f)(3)(B)(14) and 2530(f)(11).

Deleted Subsection 2425(e)(3)(A): The deletion of this subsection is necessary to simplify the reporting process for processors wishing to submit a claim for quality glass incentive payments. Current regulations require the processor to indicate on the Shipping Report (DR-6) whether eligible glass has been color-sorted or is mixed. Subsection 2425(e)(3)(A) requires color-sorted glass to be designated with a “CS” on the Shipping Report (DR-6). The amended Subsection 2425(e)(3) will delete the requirement of identifying both color-sorted and mixed glass, and simply require the reporting of materials that are color-sorted. This amendment will be consistent with proposed amendments to Subsection 2090(f)(3)(B)(14) and 2530(f)(11).

Deleted Subsection 2425(e)(3)(B): The deletion of this subsection is necessary to simplify the reporting process for processors wishing to submit a claim for quality glass incentive payments. Current regulations require the processor to indicate on the Shipping Report (DR-6) whether eligible glass has been color-sorted or is mixed. Subsection 2425(e)(3)(B) requires mixed glass to be designated by an “MX” on the Shipping Report (DR-6). The amended Subsection 2425(e)(3) will eliminate the requirement of identifying glass materials that are not color-sorted (i.e., mixed-color). This amendment will be consistent with proposed amendments to Subsection 2090(f)(3)(B)(14) and 2530(f)(11).

Subchapter 6. Recycling Centers

Article 3. Accounting and Reporting Requirements

SECTION 2530

Amended Subsection 2530(f)(11): This amendment is necessary to reflect the changes made in statute by SB 528. Prior to the enactment of this bill, only curbside programs could receive quality glass incentive payments for color-sorted glass beverage containers. SB 528 extended the eligibility for quality glass incentive payments to any certified entity that color-sorts glass beverage containers collected by curbside programs. The amendment simplifies the reporting process for recyclers on the Shipping Report (DR-6), and deletes the requirement that mixed-color materials also be identified in this report. The new requirement provides that the designating sorting facility will also identify color-sorted glass - “S” will designate that the glass had been color-sorted by the Shipper, and “R” will designate that the glass had been color-sorted by the Receiver. This amendment will be consistent with proposed amendments to Subsection 2090(f)(3)(B)(14) and 2425(e)(3).

Deleted Subsection 2530(f)(11)(A): The deletion of this subsection is necessary to simplify the reporting process for certified entities wishing to submit a claim for quality

glass incentive payments. Current regulations require the recycler to indicate on the Shipping Report (DR-6) whether eligible glass has been color-sorted or is mixed. Subsection 2530(f)(11)(A) requires color-sorted glass to be designated with a “CS” on the Shipping Report (DR-6). The amended Subsection 2530(f)(11) will delete the requirement of identifying both color-sorted and mixed glass, and simply require the reporting of materials that are color-sorted. This amendment will be consistent with proposed amendments to Subsection 2090(f)(3)(B)(14) and 2425(e)(3).

Deleted Subsection 2530(f)(11)(B): The deletion of this subsection is necessary to simplify the reporting process for certified entities wishing to submit a claim for quality glass incentive payments. Current regulations require the recycler to indicate on the Shipping Report (DR-6) whether eligible glass has been color-sorted or is mixed. Subsection 2530(f)(11)(B) requires mixed glass to be designated by an “MX” on the Shipping Report (DR-6). The amended Subsection 2530(f)(11) will eliminate the requirement of identifying glass materials that are not color-sorted (i.e., mixed-color). This amendment will be consistent with proposed amendments to Subsection 2090(f)(3)(B)(14) and 2425(e)(3).

Subchapter 11.5. Quality Glass Incentive Payments

Article 1. General Requirements

New Subchapter 11.5: Prior to the enactment of SB 528, quality glass incentive payments could only be made to curbside programs, as specified. The guidelines for making these payments were contained in Section 2690, which was contained in Subchapter 8 of the regulations regarding curbside programs. SB 528, as enacted October 14, 2001, extended the eligibility for quality glass incentive payments to any certified entity that color-sorts glass beverage containers. Therefore, the regulations regarding quality glass incentive payments must be renumbered and moved from Subchapter 8, which pertains to curbside programs. Because no current Subchapter applies to such a broad scope of participants, a new Subchapter must be established. Section 2690 has been renumbered as Section 2850, and moved from Subchapter 8 (regarding curbside programs) to new Subchapter 11.5 (regarding Quality Glass Incentive Payments).

New Article 1. General Requirements: Prior to the enactment of SB 528, quality glass incentive payments could only be made to curbside programs, as specified. The guidelines for making these payments were found in Section 2690, which was contained in Article 3 of Subchapter 8 of the regulations regarding curbside programs. SB 528, as enacted October 14, 2001, no longer restricts the payment of quality glass incentive payment to curbside programs, but extends the eligibility to any certified entity that color-sorts glass beverage containers. Therefore, the regulations regarding quality glass incentive payments must be renumbered and moved, and because no current Article and Subchapter applies to such a broad scope of participants, a new Subchapter and a new Article 1, regarding General Requirements must be established. Therefore, Section 2690 has been renumbered as Section 2850, and moved from Subchapter 8

(regarding curbside programs) to new Article 1 (regarding General Requirements) within new Subchapter 11.5 (regarding Quality Glass Incentive Payments).

SECTION 2850

Renumbered Section 2850: Prior to the enactment of SB 528, quality glass incentive payments could be made only to curbside programs, as specified. The guidelines for making these payments were contained in Section 2690, which was contained in Subchapter 8 of the regulations regarding curbside programs. Because SB 528, as enacted October 14, 2001, no longer restricts the payment of quality glass incentive payment to curbside programs, but extends the eligibility to any certified entity that color-sorts glass beverage containers, this provision must be renumbered and moved to new Subchapter 11.5 that applies to Quality Glass Incentive Payments. Therefore, Section 2690 has been renumbered as Section 2850, and moved from Subchapter 8 (regarding curbside programs) to new Article 1 (regarding General Requirements) within Subchapter 11.5 (regarding Quality Glass Incentive Payments).

Amended Subsection 2850(a): This amendment is necessary to reflect the changes made in statute by SB 528. Prior to the enactment of this bill, only curbside programs could receive quality glass incentive payments for color-sorted glass beverage containers. SB 528 extended the eligibility for quality glass incentive payments to any certified entity that color-sorts glass beverage containers collected by curbside programs. This amendment deletes the eligibility restriction for quality glass incentive payments, which was contained in prior statute. This amendment clarifies that quality glass incentive payments are to be made directly to any certified entity that color-sorts glass from curbside programs.

New Subsection 2850(b): This Section is necessary to inform certified entities that color-sort eligible material prior to completion of the Shipping Report (DR-6) that the sorting facility must be identified on the Shipping Report Form, as specified in Subsection 2425(e), or 2530(f). Identification of the sorting facility on the Shipping Report (DR-6) will enable the Division's fiscal intermediary (IKON) to determine the entity that is to be paid for the volume of eligible color-sorted materials specified.

New Subsection 2850(c): Because the Shipping Report (DR-6) can only be completed by recyclers and processors and reflects the condition of material (i.e., color-sorted or mixed-color) purchased at that point in time, materials that are color-sorted after completion of the DR-6 cannot be claimed as color-sorted on the Shipping Report (DR-6). For that reason, a separate process has been established for those certified entities that choose to claim quality glass incentive payments for eligible materials that are color-sorted after completion of the Shipping Report (DR-6).

This new Subsection is necessary to inform certified entities that color-sort eligible material after completion of the Shipping Report (DR-6) of the need to complete a Quality Glass Incentive Payment Claim Form (DOR 56) for each calendar month the quality glass incentive payments are being requested. This will allow the Division to

track claims, forecast the amount of color-sorted materials, calculate the payments per ton, and audit the accuracy of payments made. In addition, the certified entity will be required to request an authorization from the Division to submit claims for quality glass incentive payments.

New Subsection 2850(c)(1): This new Subsection is necessary to inform certified entities that choose to color-sort glass after completion of the Shipping Report Form that they must submit to the Division a request for approval of an authorization to submit claims for quality glass incentive payments. Included in this request is a methodology to be developed by the sorting facility to attribute glass materials to the types of programs from which they were received. This will ensure that glass materials collected from sources other than curbside programs are excluded from the amount claimed.

New Subsection 2850(c)(2): This new Subsection is necessary to establish guidelines the Division will use in reviewing a request for authorization to submit claims for quality glass incentive payments. The Division will be required to review each request for authorization and issue a written approval or denial within 45 days of receipt of the request. The authorization will be valid for a period of three years from the date of approval unless surrendered, suspended, or revoked by the Division.

New Subsection 2850(c)(3): This new Subsection is necessary to establish and inform participants of the Division's criteria that will be used to deny a request for authorization, or for suspending or revoking an approved authorization.

New Subsection 2850(c)(3)(A): This new Subsection is necessary to inform participants that a request for authorization may be denied, or an approved authorization may be suspended or revoked if mixed-color glass that is received from entities other than curbside programs is not excluded from the quality glass incentive payment claim. Statute specifies that quality glass incentive payments be paid only on material collected by curbside programs. Sorting facilities must demonstrate their ability to ensure the exclusion of non-curbside materials from the quality glass incentive payment claims.

New Subsection 2850(c)(3)(B): This new Subsection is necessary to inform participants that a request for authorization may be denied, or an approved authorization may be suspended or revoked if they are unable to account for each incoming load of mixed color glass. This will ensure that only eligible materials are claimed, and allow the Division to track and audit materials and payments made for color-sorted glass.

New Subsection 2850(c)(3)(C): This new Subsection is necessary to inform participants that a request for authorization may be denied, or an approved authorization may be suspended or revoked if claims are not based on the color-sorted weight of the glass material. This Subsection will implement the statutory provision that restricts the payment of quality glass incentive payments to color-sorted glass beverage containers.

New Subsection 2850(c)(3)(D): This new Subsection is necessary to inform participants that a request for authorization may be denied, or an approved authorization may be suspended or revoked if the required records are not maintained. The maintenance of these inventory records allows the Division to track the materials shipped and received, thereby enhancing the ability of the Division to audit and ensure the accuracy of the payments made to the facility, thereby ensuring the integrity of the California Beverage Container Recycling Fund.

New Subsection 2850(c)(3)(E): This Subsection is necessary to inform participants that a request for authorization may be denied, or an approved authorization may be suspended or revoked if the sorting facility has been found to be in violation of the Act or regulations. The ability of the Division to deny, suspend, or revoke authorization to file a claim will encourage compliance with provisions contained in the Act and regulations.

New Subsection 2850(c)(4): This new Subsection is necessary to inform any sorting facility of the reconsideration process that is available if the Division denies, suspends, or revokes an authorization to submit claims for quality glass incentive payments. The sorting facility will be required to submit a written request for reconsideration within 30 days of the service of notice, and include the information specified in paragraphs (A) through (C).

New Subsection 2850(c)(4)(A): This new Subsection is necessary to inform the sorting facility that, with the request for reconsideration, they must include a copy of the notice of denial, suspension, or revocation that is sent by the Division. This will ensure that the Division reviews information regarding the correct parties and accurately addresses the grounds for denial, suspension, or revocation.

New Subsection 2850(c)(4)(B): This new Subsection is necessary to inform the sorting facility that, with the request for reconsideration, they must include a detailed explanation of their proposed grounds for reconsideration. This will allow the Division to effectively and accurately review and address the basis of the request for reconsideration.

New Subsection 2850(c)(4)(C): This new Subsection is necessary to inform the sorting facility that, with the request for reconsideration, they must include any documentation that supports the request. This will allow the Division to effectively and accurately review and address the basis of the request for reconsideration.

New Subsection 2850(c)(5): This new Subsection is necessary to establish a time period in which the Division must make a determination regarding any request for reconsideration of a denial, suspension, or revocation of an authorization to submit claims for quality glass incentive payments. This will hold the Division accountable, and ensure the prompt review of any such request.

New Subsection 2850(c)(6): This new Subsection is necessary to inform certified entities who submit claims of the time frame required for submission of the Quality Glass Incentive Payment Claim (DOR 56). These time frames are necessary to allow sufficient time for both the participant to submit necessary information, and the Division to review and process the claims accurately. To encourage the prompt and accurate submission of claims, claimants are informed that late or incomplete claims may be denied.

New Subsection 2850(c)(7): This new Subsection is necessary to inform the certified entities that choose to submit claims of the information that will be required on the Quality Glass Incentive Payment Claim Form (DOR 56).

New Subsection 2850(c)(7)(A): This new Subsection is necessary to inform the certified entities who choose to submit claims to specify the month for which the claim is being submitted. This requirement will assist the Division and certified entity in maintaining accurate records. This will facilitate the payment of claims and the tracking, projection, and auditing of payments.

New Subsection 2850(c)(7)(B): This new Subsection is necessary to inform the certified entities who choose to submit claims that they must include their facility name, mailing address, and certification number to ensure payment is correctly made and to allow the Division to verify that the sorting facility is actually a certified entity. This information will also assist the Division in tracking and auditing payments to ensure the integrity of the Beverage Container Recycling Fund.

New Subsection 2850(c)(7)(C): This new Subsection is necessary to inform the certified entities who choose to submit claims that they must include the name and phone number of a contact person. This information will facilitate the payment process when the information submitted is ambiguous or incomplete. This information will also assist the Division in tracking and auditing payments to ensure the integrity of the Beverage Container Recycling Fund.

New Subsection 2850(c)(7)(D): This new Subsection is necessary to inform certified entities who choose to submit claims to include the redemption weight of the color-sorted glass materials on the Quality Glass Incentive Payment Claim Form (DOR 56 01/02). This allows the Division to determine the payment to be made to the sorting facility.

New Subsection 2850(c)(7)(E): This new Subsection is necessary to specify that the signature and title of the authorized representative of the certified entity must be included on the Quality Glass Incentive Payment Claim Form (DOR 56). This allows the Division to determine legitimate claims, and to track and audit payments made.

New Subsection 2850(c)(7)(F): This new Subsection is necessary to inform claimants that the Quality Glass Incentive Payment Claim Form (DOR 56) must be dated. This will enhance the ability of the Division and the claimant to accurately track and review

claims. This will also allow the Division to perform necessary audits of participants to ensure the integrity of the California Beverage Container Recycling Fund.

Renumbered Subsection 2850(d): This Section is renumbered due to the addition of new Subsections 2850(b) and (c), which changed the numbering of subsequent sections for consistency. Therefore, this Subsection, which was numbered 2690(b) in previously adopted regulations, is now renumbered 2850(d) in this regulatory package.

Amended Subsection 2850(d): This amendment is necessary to clarify the Division's authority to deny or reduce the quality glass incentive payment if the Division has prevailed in a claim against any certified entity and money is owed to the Division. Pursuant to current regulations, the Division has authority to deny or reduce a payment to curbside programs if the Division has prevailed in a claim against a curbside program. Because SB 528 expanded the eligibility to claim quality glass incentive payments to any certified entity, this change will reflect the change made in statute.

Renumbered Section 2850(e): This Section is renumbered due to the addition of new Subsections 2850(b) and (c), which changed the numbering of subsequent sections for consistency. Therefore, this Subsection, which was numbered 2690(c) in previously adopted regulations, is now renumbered 2850(e) in this regulatory package.